

(1999) 06 KAR CK 0037

In the Karnataka High Court

Case No : Writ Petition No. 6620 of 1993

K.T. Laxmana Gowda and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-06-1999

Acts Referred:

Karnataka State Universities Act, 1976 — Section 49, 50, 51 (B), 68 (3)

Citation : (1999) ILR (Kar) 3785 : (1999) 6 KarLJ 273

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri Ashok, for Sri H.S. Jois, for the Appellant; Sri N.B. Vishwanath, High Court Government Pleader and Sri Srinivas, for M/s. Shetty and Hegde Associates, for the Respondent

Judgement

1. Section 68 of Karnataka State Universities Act, 1976 empowers the State Government to transfer to the University by an order published in the Official Gazette any of its colleges, with hostels, buildings, laboratories, stores, equipments etc. Upon the publication of any such transfer order, the transferred college becomes a college maintained and administered by the University and the properties mentioned in the order become the properties of the University. Sub-section (3) of Section 68 provides that where any college has been transferred for maintenance and control of the University by an order under sub-section (1) then, notwithstanding anything contained in the Act, all members of the teaching staff and other servants of the State Government, who were immediately before the date of publication of the order serving in or attached to the college shall stand transferred to the appropriate cadre or category of posts in the University. The grievance of the petitioners in the present writ petition is against an order dated 1st of August, 1992, whereby the Government have transferred to the Mangalore University, Government college, Mangalore. The grievance precisely is that the petitioners were entitled to continue in the service of the college, which now stand terminated by reason of the transfer of the college to the University. The wisdom behind the transfer of the college to the University has also been

questioned. It is urged by learned Counsel appearing for the petitioners that although a large number of full time vacancies of lecturers were in existence, yet no action was taken by the University to fill up the same. Instead part-time appointments were made, depriving the part-time lecturers of the benefit of prescribed time-scale of pay admissible to those appointed on regular basis. The transfer order it was argued prevented the petitioners from claiming regularisation of their services under the State Government.

2. The respondent-University has filed a statement of objections, in which it is inter alia stated that the petitioners were all appointed as part-time lecturers in accordance with the Government circulars issued from time to time and were in terms of the said orders entitled to a maximum remuneration of Rs. 75/- per month if they taught for one hour per week. The monthly remuneration, which was admissible to such lecturers was Rs. 600/- only with a maximum work load of eight hours per week, which was only 50% of the work load, assigned to the regular lecturer. It is further stated that appointments of staff in the University was governed by Karnataka State Universities Act, in which there was no provision either to appoint or continue an appointment earlier made on part-time basis. Sections 49, 50 and 51(B) of the Act do not, according to the respondents, empower the Vice-Chancellor or any other authority in the University to make appointments on part-time basis or continue any such appointments. The part-time appointees were, free to engage themselves in any other vocation. Their services were terminable after a period of nine months or the last working day of the session. They were not appointed by the competent recruiting authority nor was any such appointment made based on recruitment rules or in accordance with the roster system prescribed for regular appointments. Even the minimum qualification prescribed for regular appointment was not followed as all these appointments were made only to meet the excess work load till the full time lecturers were appointed.

3. When this petition came up for admission, the termination of the services of the petitioners was stayed by an interim order dated 5th of March, 1993. That order was vacated by this Court on 18th of August, 1993. Consequently, the services of the petitioners were terminated nearly six years ago. The admitted position is that the petitioners are not in service whether on part-time, temporary or permanent basis either in the State Government or in the University as on date. The question then is whether they can on the basis of their part-time engagements claim any right to get absorbed in the University service consequent upon the transfer order made by the Government. That order is relatable to Section 68(3) of the Universities Act referred to earlier although it does not make any reference to the said provision. It is fairly well-settled that even when an order issued by authority does not make any reference to the provision under which it is issued, the same can be related to the source of power otherwise available to it. Since the power to transfer its colleges is available to the State Government u/s 68, the impugned order be deemed to have been issued in exercise of the same. Section 68(3)(a) with which we are

concerned runs thus.-

"All members of the teaching staff and other servants of the State Government, who immediately before the date of the publication of the said order, were serving in or were attached to that college shall stand transferred to the appropriate cadre or category of posts in the University".

4. It is evident from a plain reading of the above that the provision envisages transfer of "members of teaching staff and other servants against "appropriate cadre or category of posts" in the University. Two questions at this stage arise. Firstly, whether the petitioners were members of the teaching staff or servants of the State Government within the meaning of clause (a) above so as to be entitled to claim the right to get transferred and absorbed at the appropriate level in the University and secondly, whether the Universities Act provides for the appointment or adjustment of the part-time lecturer by transfer or otherwise. My answer to both the questions is in the negative. The expression "all members of the teaching staff and other servants of the State Government" used in clause (a) above does not, in my opinion, include such part-time or temporary arrangements, as do not create a right in the person appointed to hold any such post. It is only such of the members of the teaching staff and servants of the State Government as had the right to hold the post against which they were serving, who can possibly claim, as a matter of right, transfer to the appropriate cadre or category of posts in the University upon transfer of the college. Such of the persons as were serving on purely temporary stop-gap arrangement or on part-time basis where such part-time engagement was meant only to take care of the excess work load of the college without the appointee enjoying any other benefit like the pay scale attached to the post or discharging the regular duties attached to the same could not be deemed to be a member of the teaching staff or a servant of the State Government so as to fall within the purview of sub-section (3)(a), supra. The part-time engagement was in its very nature a temporary engagement, which did not create any right to hold the post in favour of the appointee. As a matter of fact, such appointments were not made against regular vacancies nor were such appointments made on the basis of a regular, transparent or satisfactory method of selection, in which competing claims of other eligible candidates were also considered. The employment of part-time lecturers would therefore not tantamount to addition of teaching staff for employment in the service of the State within the meaning of sub-section (3)(a). Similarly, the question of transferring or adjusting any such part-time lecturers in the University services could possibly arise only if there was an appropriate cadre or category of part-time lecturers in the University. As noticed earlier, the University has, on affidavit, stated that it does not have the system of appointing part-time lecturers and that no authority under the Act is empowered to make any such part-time appointment. Even the temporary appointments permissible in terms of the Act have to be notified and competing claims of the eligible candidates considered before the University can make any such appointment. Such being the position, the petitioners could not claim any vested right to be

transferred or adjusted in the service of the University as part-time lecturers.

5. It was then argued on behalf of the petitioner that the petitioners ought to have been given an option to continue as part-time lecturers in the service of the Government with whatever advantages or shortcomings, any such appointment may have carried. Such an option not having been given, it was argued, was sufficient to render the transfer order illegal. There is, in my opinion, no merit in that submission either. Section 68 of the Act, which provides for transfer of colleges to the University does not envisage the grant of any option to any serving employee to either continue in State services or to get shifted to the University. Even in regard to a permanent State Government employee, no such option is provided for let alone to a temporary employees, who does not have the right to hold the post on which he is working. A similar contention was examined and rejected by Bharuka, J., in *K. Channabasappa and Others Vs. The Kuvempu University, B.R. Project, Shimoga District and Another*, . That was in fact a case where the State Government had at some stage given an option to the employees of the college to continue in State service. That option was on a correct appreciation of the legal position, held to be a mistake for Section 68 did not envisage any such option being given. The question of interfering with the impugned order therefore does not arise.

6. It was lastly contended by Counsel appearing for the petitioners that the petitioners could be considered for regular or temporary appointments in the University as they had served in the college and had therefore acquired experience, which would deserve suitable weightage. The University is required to make the regular and even the temporary appointments after considering the claims of all those, who were eligible for such appointments in accordance with the rules and the norms on the subject. If any such temporary or permanent vacancies are advertised and the petitioners are keen to stake their claim for appointment against the same, they shall be at liberty to apply as and when any such applications are invited. There is no gain said that if the petitioners are on verification of their claim found to be eligible for appointment against the post, if and when notified, the competent authority shall have to consider such claims also. Since there is nothing to suggest that the University has issued any notification inviting applications or that the petitioners have filed any applications seeking appointment against the same, it is premature for this Court to issue any directions at this stage. An occasion to do so may arise only when posts are notified and the petitioners even when they are eligible for appointment against the same are ignored from consideration.

7. In the result, this writ petition fails and is hereby dismissed, but in the circumstances without any orders as to costs.